

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 770

Introduced by Assembly Member Mullin

February 18, 2005

An act to amend Section 11504 of the Business and Professions Code, and to amend Sections 1369.510 and 1373 of, to add Section 1363.7 to, and to add Chapter 11 (commencing with Section 1380.010) to Title 6 of Part 4 of Division 2 of, the Civil Code, relating to common interest developments, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 770, as amended, Mullin. Common interest developments: ombudsperson.

(1) Existing law requires a person who either provides or contemplates providing the services of a common interest development manager to a community association to annually disclose to the board of directors of the community association specified information, including whether or not he or she has met certain requirements to be called a certified common interest development manager and the location of his or her primary office.

This bill would require this information to be disclosed in writing, and would additionally require the person to disclose whether or not he or she has read the governing documents of the community association.

(2) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments, which include

condominiums and planned developments. The act requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes. Among other things, the act requires the association that manages a development to provide a fair, reasonable, and expeditious procedure for resolving disputes between the association and members of the association involving their rights, duties, or liabilities under the act. The act also requires an association or an owner of a separate interest or a member of an association to endeavor to submit their dispute to alternative dispute resolution before they file certain enforcement actions in the superior court.

This bill would, until January 1, 2011, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the Ombudsperson, among other things, to offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner. The bill would require the Ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain requirements in that regard. The bill would authorize the Ombudsperson to provide assistance in resolving common interest development disputes, and would require a specified fee for that resolution. The bill would impose a biennial association fee on common interest development associations to fund the administration of the provisions of the bill, for deposit in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund. Because the funds in that account would be continuously appropriated, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 11504 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 11504. (a) On or before September 1, 2003, and on an annual
- 4 basis thereafter, a person who either provides or contemplates

1 providing the services of a common interest development
2 manager to a community association shall disclose to the board
3 of directors of the community association the following
4 information *in writing*:

5 ~~(a)~~

6 (1) Whether or not the common interest development manager
7 has met the requirements of Section 11502 so he or she may be
8 called a certified common interest development manager.

9 ~~(b)~~

10 (2) The name, address, and telephone number of the
11 professional association that certified the common interest
12 development manager, the date the manager was certified, and
13 the status of the certification.

14 ~~(c)~~

15 (3) The location of his or her primary office.

16 ~~(d)~~

17 (4) Prior to entering into or renewing a contract with a
18 community association, the common interest development
19 manager shall disclose to the governing board of the community
20 association whether the fidelity insurance of the community
21 manager or his or her employer covers the operating and reserve
22 funds of the community association. This requirement may not
23 be construed to compel or require a community association or
24 common interest development manager to require fidelity
25 insurance.

26 ~~(e)~~

27 (5) Possession of an active real estate license, if applicable.

28 (6) *Whether or not the common interest development manager*
29 *has read the governing documents of the community association.*

30 (b) This section may not preclude a common interest
31 development manager from disclosing information as required in
32 Section 1363.1 of the Civil Code.

33 ~~SECTION 1.~~

34 *SEC. 2.* Section 1363.7 is added to the Civil Code, to read:

35 1363.7. An association shall provide its members with annual
36 written notice of the Internet Web site address and toll-free
37 telephone number of the Common Interest Development
38 Ombudsperson established pursuant to Chapter 11 (commencing
39 with Section 1380.010).

~~SEC. 2.~~

SEC. 3. Section 1369.510 of the Civil Code is amended to read:

1369.510. As used in this article:

(a) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure, including mediation pursuant to Section 1380.300, that involves a neutral party in the decisionmaking process. The form of alternative dispute resolution chosen pursuant to this article may be binding or nonbinding, with the voluntary consent of the parties.

(b) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

(1) Enforcement of this title.

(2) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(3) Enforcement of the governing documents of a common interest development.

~~SEC. 3.~~

SEC. 4. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter 2.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Section 1378.

(10) Chapter 11 (commencing with Section 1380.010).

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments; however, the provisions may

1 not be necessary to protect purchasers in commercial or industrial
2 developments since the application of those provisions could
3 result in unnecessary burdens and costs for these types of
4 developments.

5 ~~SEC. 4.~~

6 SEC. 5. Chapter 11 (commencing with Section 1380.010) is
7 added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

8
9 CHAPTER 11. COMMON INTEREST DEVELOPMENT
10 OMBUDSPERSON PILOT PROJECT

11
12 Article 1. Definitions

13
14 1380.010. Unless the provision or context otherwise requires,
15 the definitions in this article govern the construction of this
16 chapter.

17 1380.020. "Owner" means the owner of a separate interest.

18 1380.030. "Person" includes a natural person, firm,
19 association, organization, partnership, business trust, corporation,
20 limited liability company, or public entity.

21
22 Article 2. Administration

23
24 1380.100. The Legislature finds and declares all of the
25 following:

26 (a) There are more than 36,000 residential common interest
27 developments in California, comprising more than 3,000,000
28 dwellings. Common interest developments comprise
29 approximately one-quarter of the state's housing stock.

30 (b) Managing a common interest development is a complex
31 responsibility. Community associations are run by volunteer
32 directors who may have little or no prior experience in managing
33 real property, operating a nonprofit association or corporation,
34 complying with the law governing common interest
35 developments, and interpreting and enforcing restrictions and
36 rules imposed by the governing documents of the common
37 interest development. Homeowners may not fully understand
38 their rights and obligations under the law and the governing
39 documents. Mistakes and misunderstandings are inevitable and
40 may lead to serious, costly, and divisive problems. The Common

1 Interest Development Ombudsperson seeks to educate
2 community association officers and homeowners as to their legal
3 rights and obligations. Effective education can prevent or reduce
4 the severity of problems within a common interest development.

5 (c) The principal remedy for a violation of common interest
6 development law is private litigation. Litigation is not an ideal
7 remedy for many common interest development disputes, where
8 the disputants are neighbors who must maintain ongoing
9 relationships. The adversarial nature of litigation can disrupt
10 these relationships, creating animosity that degrades the quality
11 of life within the community and makes future disputes more
12 likely to arise. Litigation imposes costs on a common interest
13 development community as a whole, costs that must be paid by
14 all members through increased assessments. Many homeowners
15 cannot afford to bring a lawsuit and are effectively denied the
16 benefit of laws designed for their protection. The Common
17 Interest Development Ombudsperson provides a neutral,
18 nonjudicial forum for resolution of common interest development
19 disputes. Many disputes can be resolved inexpensively,
20 informally, and amicably through ombudsperson-facilitated
21 mediation.

22 (d) Anecdotal accounts of abuses within common interest
23 developments create continuing public demand for reform of
24 common interest development law. This results in frequent
25 changes to the law, making it more difficult to understand and
26 apply and imposing significant transitional costs on common
27 interest developments statewide. By collecting empirical data on
28 the nature and incidence of problems within common interest
29 developments, the Common Interest Development
30 Ombudsperson provides a sound basis for prioritizing reform
31 efforts, thereby increasing the stability of common interest
32 development law.

33 (e) The costs of the Common Interest Development
34 Ombudsperson Pilot Project shall be borne entirely by common
35 interest development homeowners, through imposition of a
36 biennial fee.

37 1380.110. (a) There is in the Department of Consumer
38 Affairs the Office of the Common Interest Development
39 Ombudsperson, under the supervision and control of the ~~director~~
40 ~~of the Department~~ *Director* of Consumer Affairs.

1 (b) ~~The director of the Department~~ *Director* of Consumer
2 Affairs shall employ a Common Interest Development
3 Ombudsperson and other officers and employees as necessary to
4 discharge the requirements of this chapter. The Common Interest
5 Development Ombudsperson shall have the powers delegated by
6 the director.

7 (c) The Ombudsperson shall adopt rules governing practices
8 and procedures under this chapter. Any rule adopted under this
9 subdivision is subject to the rulemaking provisions of the
10 Administrative Procedure Act (Chapter 3.5 (commencing with
11 Section 11340) of Part 1 of Division 3 of Title 2 of the
12 Government Code).

13 (d) Information and advice provided by the Ombudsperson has
14 no binding legal effect and is not subject to the rulemaking
15 provisions of the Administrative Procedure Act (Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code).

18 ~~(e) There shall be no liability on the part of, and no cause of~~
19 ~~action of any nature shall arise against, the State of California or~~
20 ~~any of its employees, agents, or representatives for providing or~~
21 ~~failing to provide information or advice pursuant to this chapter.~~

22 ~~(f)~~

23 (e) The Ombudsperson may convene an advisory committee to
24 make recommendations on matters within the Ombudsperson's
25 jurisdiction. A member of an advisory committee shall receive
26 per diem and expenses pursuant to Section 103 of the Business
27 and Professions Code. In selecting the members of an advisory
28 committee, the Ombudsperson shall ensure a fair representation
29 of the interests involved.

30 1380.120. The Common Interest Development
31 Ombudsperson shall report annually to the Legislature, no later
32 than October 1 of each year. The report shall include all of the
33 following information:

34 (a) Annual workload and performance data, including the
35 number of requests for assistance received, the manner in which
36 a request was or was not resolved, and the staff time required to
37 resolve the inquiry. For each category of data, the Ombudsperson
38 shall provide subtotals based on the type of question or dispute
39 involved in the request.

(b) Analysis of the most common and serious types of disputes within common interest developments, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

(c) On or before January 1, 2009, the Ombudsperson shall submit recommendations to the Legislature on the following topics:

(1) Whether the Ombudsperson should be authorized to enforce common interest development law.

(2) Whether the Ombudsperson should be authorized to oversee association elections.

(3) Whether the scope of application of Section 1380.230 should be narrowed or broadened.

1380.130. (a) On filing information with the Secretary of State every two years, pursuant to subdivision (a) of Section 1363.6, an association shall submit a Common Interest Development Ombudsperson Fee. This fee is in addition to the fee submitted pursuant to Section 1363.6. Failure to submit the Common Interest Development Ombudsperson Fee is deemed noncompliance with Section 1363.6.

(b) The Common Interest Development Ombudsperson Fee shall equal the number of separate interests within the association multiplied by the biennial fee amount. The initial biennial fee amount is ten dollars (\$10).

(c) An association is excused from paying the fee for a separate interest if another association has paid the fee for that separate interest. An association that is excused from paying the fee for a separate interest shall certify, on a form developed by the Secretary of State for that purpose, that another association has paid the fee for that separate interest. The Ombudsperson may adopt, by regulation, a rule governing which association is required to pay the fee for a separate interest that is part of more than one association.

(d) The Common Interest Development Ombudsperson shall increase or decrease the biennial fee amount every two years to provide only the revenue that it estimates will be necessary for its operation during the next two-year period. The biennial fee amount shall not exceed twenty dollars (\$20).

1 (e) *Subdivision (b) of* Section 1366 does not limit an
2 assessment increase necessary to recover the fee imposed by this
3 section.

4 1380.140. Common Interest Development Ombudsperson fee
5 revenue received by the Secretary of State and fee revenue
6 received by the Common Interest Development Ombudsperson
7 shall be transferred to the State Treasurer and placed in the Fee
8 Account of the Common Interest Development Ombudsperson
9 Fund, which is hereby created. All funds in the Fee Account of
10 the Common Interest Development Ombudsperson Fund are
11 continuously appropriated to the Ombudsperson, to be used
12 exclusively for expenditures necessary for the proper
13 administration of this chapter.

14 1380.150. (a) This chapter shall remain in effect only until
15 January 1, 2011, and as of that date is repealed, unless a later
16 enacted statute that is enacted before January 1, 2011, deletes or
17 extends that date.

18 (b) The Common Interest Development Ombudsperson Pilot
19 Project is subject to the sunset review process conducted by the
20 Joint Committee on Boards, Commissions, and Consumer
21 Protection pursuant to Division 1.2 (commencing with Section
22 473) of the Business and Professions Code.

23
24 Article 3. Education
25

26 1380.200. (a) The Common Interest Development
27 Ombudsperson shall offer training materials and courses to
28 common interest development directors, officers, and owners, in
29 subjects relevant to the operation of a common interest
30 development and the rights and duties of an association or owner.

31 (b) The Ombudsperson may charge a fee for training materials
32 or courses, not to exceed their actual cost.

33 1380.210. The Common Interest Development
34 Ombudsperson shall maintain a toll-free telephone number to
35 provide information or assistance on matters relating to common
36 interest developments.

37 1380.220. (a) The Common Interest Development
38 Ombudsperson shall maintain an Internet Web site, which shall
39 provide all of the following information:

(1) The text of this title, the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), and any other statute or regulation that the Ombudsperson determines would be relevant to the operation of a common interest development or the rights and duties of an association or owner.

(2) Information concerning nonjudicial resolution of disputes that may arise within a common interest development, including contacts for locally available dispute resolution programs organized pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code.

(3) A description of the services provided by the Ombudsperson and information on how to contact the Ombudsperson for assistance.

(4) An analysis, prepared each year, of legislative changes to common interest development law.

(5) Any other information that the Ombudsperson determines would be useful to an association or owner.

(b) Information provided on the Ombudsperson's Internet Web site shall also be made available in printed form. The Ombudsperson may charge a fee for the purchase of printed material, not to exceed the actual cost of printing and delivery.

1380.230. (a) Within 60 days of assuming office as an association director ~~or providing services as a managing agent, an association director or managing agent shall certify that the director or managing agent, the director shall certify that he or she~~ has read each of the following:

(1) The declaration, articles of incorporation or association, and bylaws of the association ~~that the director or managing agent serves.~~

(2) This title or, if the Common Interest Development Ombudsperson prepares a detailed summary of the requirements of this title, that summary.

(b) A director shall file the certification required by this section with the Ombudsperson. ~~A managing agent shall file the certification required by this section with the association served by that managing agent.~~

~~(c) For the purposes of this section, "managing agent" means a person or entity who, for compensation or in expectation of compensation, exercises control over the assets of a common~~

1 ~~interest development. “Managing agent” does not include a~~
2 ~~regulated financial institution operating within the normal course~~
3 ~~of its regulated business practice.~~

4
5 Article 4. Informal Dispute Resolution
6

7 1380.300. (a) Any interested person may request that the
8 office of the Common Interest Development Ombudsperson
9 provide assistance in resolving a dispute involving the law
10 governing common interest developments or the governing
11 documents of a common interest development.

12 (b) On receipt of a request for assistance, the Ombudsperson
13 shall, within the limits of the available resources, confer with the
14 interested parties and assist in efforts to resolve the dispute by
15 mutual agreement of the parties. If a dispute cannot be resolved
16 through informal conference, the Ombudsperson may offer to
17 mediate the dispute.

18 (c) The Ombudsperson may, by regulation, adopt a fee for
19 mediation services of not more than twenty-five dollars (\$25) per
20 mediation.

21 (d) The Ombudsperson may contract with private parties to
22 provide mediation services pursuant to this section.

23 (e) Chapter 2 (commencing with Section 1115) of Division 9
24 of the Evidence Code applies to mediation initiated under this
25 section.